

May 3, 2019

Regional Freedom of Information Officer  
U.S. EPA, Region 6  
1445 Ross Avenue (6MD-OE)  
Dallas, TX 75202-2733  
Tele: (214) 665-7202  
Email: [r6foia@epa.gov](mailto:r6foia@epa.gov)

**Re: Freedom of Information Act Request – Enforcement**

Dear EPA FOIA Officer,

On behalf of Atchafalaya Basinkeeper (“ABK”),<sup>1</sup> in accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C.A. § 552, as amended, and in consideration of the Enforcement Memorandum of Agreement between the Department of the Army and the Environmental Protection Agency (“EPA”),<sup>2</sup> ABK submits this request for the following records in the possession, custody or control of the U.S. EPA, Region 6:

- **Any and all records related to federal enforcement for the Section 404 Program of the Clean Water Act within the jurisdiction of the New Orleans District of the U.S. Army Corps of Engineers since the year 2014; including but not limited to enforcement actions; site inspections; intraagency agreements in pursuit of Section 404 enforcement activities; data information exchanges; and other correspondence between EPA and the New Orleans District of the Corps, EPA and the permittee/responsible party, and the Corps and the permittee/responsible party regarding unauthorized activities, permit noncompliance and/or allegations thereof.**
- **In particular, any and all records related to federal enforcement for the following Section 404 Clean Water Act permits issued by the New Orleans District of the Corps:**
  - **Bayou Bridge Pipeline, LLC (BBP), Perennial Environmental Services, LLC (Permit No. MVN-2015-02295-WII); and**
  - **Enterprise Products Operating, LLC (Permit No. MVN-2015-01668-WII).**

For the purposes of this request, the terms “records” or “documents” includes all written, printed, recorded or electronic materials, communications, emails, correspondence, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, evaluations, findings, contracts, letters, reports, studies, assessments, messages and mail in the possession or control of EPA, Region 6.

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<sup>1</sup> ABK is a 501(c)(3), Louisiana nonprofit organization dedicated to the protection and restoration of the Atchafalaya Basin.

<sup>2</sup> See MEMORANDUM OF AGREEMENT BETWEEN The Department of the Army AND The Environmental Protection Agency CONCERNING Federal Enforcement for the Section 404 Program of the Clean Water Act, *available at* <https://www.mvn.usace.army.mil/Portals/56/docs/regulatory/EnforcementMOA.pdf>.

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We request, and FOIA requires, a determination on this record request within twenty (20) working days after your receipt of this request. In your response, please include all reasonably segregable portions of exempt records that are themselves not exempt from disclosure. Should our record request be denied, we ask that you inform us of the grounds for denial and the specific administrative appeal rights which are available.

We also request that processing fees be waived because ABK is primarily interested in public dissemination of this information to inform the public regarding the pending, controversial restoration project in the Atchafalaya Basin, and because the request is not primarily in the commercial interest of the requestor. *See* 43 C.F.R. § 2.19. We have attached a letter requesting a fee waiver ("Attachment A") that documents our entitlement under the regulations.

We would prefer your response to be in electronic form, or in the form of a Compact Disc (CD), assuming that is possible. Please contact me if that is unavailable. For any other information that may be needed, please contact Misha Mitchell at **(225) 692-1133**, or by e-mail at [basinkeeperlegal@gmail.com](mailto:basinkeeperlegal@gmail.com).

Sincerely,



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Misha L. Mitchell  
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Atchafalaya Basinkeeper  
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Birmingham, AL 35242  
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**ATTACHMENT A**

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**Re: Request for Fee Waiver: Freedom of Information Act Request – Enforcement**

To Whom It May Concern:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, Atchafalaya Basinkeeper (“ABK”) has submitted a FOIA request to EPA, Region 6 requesting records related to federal enforcement for Clean Water Act Section 404 activities for the past five years within the jurisdiction of the New Orleans District of the U.S. Army Corps.

This letter is attached to the May 3, 2019, FOIA request submitted on behalf of ABK in order to supplement the fee waiver request within. Below, we address the criteria for fee waivers under Bureau regulations. *See* 43 C.F.R. § 2.19(b). We believe the information herein fully satisfies the fee waiver requirements.

Under FOIA, a disclosure is in the public interest if (1) “it is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” *See* 5 U.S.C. § 552(a)(4)(A)(iii). FOIA’s legislative history is explicit that the fee waiver provision should be “liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)). *See also Coalition for Safe Power v. U.S. Dep’t of Energy*, Civ. No. 87-1380PA, slip op. at 7 (D.Or. July 22, 1988) (citing *Better Gov’t Ass’n v. Dep’t of State*, 780 F.2d 86, 94 (D.C. Cir. 1986)) (By enacting the fee waiver provision of FOIA, “Congress explicitly recognized the importance and the difficulty of access to governmental documents for under-funded organizations and individuals.”). The main purpose of the fee waiver provision is “to remove the roadblocks and technicalities which have been used by various Federal agencies to deny waivers. . . .” *Id.* Here, ABK satisfies both prongs of the public interest inquiry.

First, disclosure will “contribute significantly to public understanding of the operations or activities of the government” because requesters will disseminate the information it receives to its members, supporters and collaborators. *See Carney v. U.S. Dep’t of Justice*, 19 F.3d 807, 815 (2d Cir. 1994)( “[t]he relevant inquiry . . . is whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject.”).

ABK is a citizen-based, nonprofit organization dedicated to the protection of the Atchafalaya Basin, a 1.4 million acre Basin with wetlands subject to the jurisdiction of the New Orleans District of the Corps. ABK works to protect and restore the Atchafalaya Basin, including areas gravely impacted by permitted and

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unpermitted activities. The Atchafalaya Basin serves important commercial, economic, cultural and environmental interests of the surrounding communities and state as whole. Therefore, the protection of areas within the jurisdiction of the New Orleans District of the Corps, and subject to Section 404 of the Clean Water Act, supports the mission of ABK and the interests of the communities in and around the Atchafalaya Basin. ABK keeps its over 1,100 members, supporters and collaborators informed through our website ([www.basinkeeper.org](http://www.basinkeeper.org)), our annual report and other media updates (including through our member listserv emails, facebook and instagram), all of which are available free of charge to interested parties. ABK issues statements and press releases on important topics that impact the Basin, and staff regularly gives statements and interviews to the media, makes educational presentations and speaks at public events/hearings. ABK uses these channels to educate the public in its mission to protect and restore the Atchafalaya Basin. Furthermore, ABK regularly engages with the public, its members and followers on important topics that relate to agency accountability, unpermitted activities, permit noncompliance and enforcement actions within the Basin.

The requester anticipates using the information requested to educate the public and promote discussion and dissemination of information pertaining to the efficacy of federal enforcement for Section 404 jurisdictional waters within the Atchafalaya Basin and coastal Louisiana. Moreover, ABK will share the information and collaborate with other public interest organizations which perform similar advocacy work and who, in turn, will share the information with their respective memberships to promote agency accountability and transparency, as well as public involvement and reporting to agencies regarding observations of noncompliance with Section 404 of the Clean Water Act.

Second, the disclosure of the information is in the public interest and “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). ABK is a 501(c)(3) tax-exempt, nonprofit organizations. ABK does not have a commercial, trade or profit interest in the requested records. “Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” *Judicial Watch*, 326 F.3d at 1312 (internal citation omitted); *see also Judicial Watch v. Dept. of Energy*, 310 F. Supp. 2d. 271, 291 (D.D.C. 2004) (“[T]he public interest exception should be viewed in an expansive manner”). The requester’s interest in the requested records is to educate and inform the public regarding the agency’s involvement, government accountability and compliance with applicable laws regarding activities in the Atchafalaya Basin, its wetlands and throughout the District. ABK works diligently to monitor activities throughout the Basin, and to notify the regulatory agencies of observed noncompliance with federal laws. ABK is one of the primary, on-the-ground watchdogs for goings-on in these invaluable wetlands, and plays a critical role in the enforcement paradigm.

In consideration of the above-referenced qualifications, please waive all processing and copying fees as the above satisfies the requirements of 5 U.S.C. § 552 (a)(4)(A)(iii) and 43 C.F.R. 2.19. Please provide the records requested in our May 3, 2019 letter. Nothing in this letter will constitute any waiver of our right to seek administrative or judicial review of any denial of our fee waiver request.

If you have any questions or if I can provide any additional information, please do not hesitate to contact me at (225) 692-1133, or by e-mail at [basinkeeperlegal@gmail.com](mailto:basinkeeperlegal@gmail.com). Thank you for your assistance with this request. I look forward to your prompt response.

With Kind Regards,

A handwritten signature in black ink that reads "Misha Mitchell". The signature is written in a cursive, flowing style.

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